

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	EXPEDITED ACTION REQUESTED
)	
Telecommunications Relay Services and)	CG Docket No. 03-123
Speech-to-Speech Services for Individuals with)	
Hearing and Speech Disabilities)	
)	
Petition for Rulemaking by Sprint Corporation)	RM-11820
to Establish a New Ratemaking Methodology)	
for IP Relay Service)	

REQUEST FOR INTERIM WAIVERS

Pursuant to sections 1.1, 1.3, and 1.41 of the Federal Communications Commission’s (“FCC’s” or “Commission’s”) rules,¹ T-Mobile USA, Inc. (“T-Mobile”), on behalf of Sprint Communications Company L.P. (“Sprint”) (collectively referred to herein as “T-Mobile Accessibility”)² hereby requests that the Commission grant the waivers requested herein in order to permit T-Mobile Accessibility to recover the costs it incurs as the sole provider of IP Relay service.

I. INTRODUCTION AND SUMMARY

IP Relay is a valuable form of Telecommunications Relay Service (“TRS”) that is uniquely beneficial to certain user populations. For example, IP Relay does not require the user to know American Sign Language (“ASL”), a feature that makes the service especially useful for those with hearing loss who lack the ASL skills to use Video Relay Services. As a result, IP

¹ 47 C.F.R. §§ 1.1, 1.3, 1.41. *See also* 47 U.S.C. § 225.

² T-Mobile and Sprint are now one company operating under the name T-Mobile. The merger closed on April 1, 2020. Sprint Communications Company L.P. is the entity through which T-Mobile Accessibility provides state and federal relay services. Sprint Communications Company L.P. is now an indirect, wholly owned subsidiary of T-Mobile.

Relay frequently is used by those who lose hearing later in life and “is often the only way someone who is deaf or hard of hearing can reach 911 while outside of the home.”³ IP Relay also is uniquely beneficial to DeafBlind users. IP Relay does not require the ability to see an interpreter on a screen; the service can be enhanced with adaptive technologies, such as Braille or screen readers; and high-speed internet is not required to use the service.⁴

Notwithstanding the importance of IP Relay, the service is on the verge of disappearing. Due to the lack of adequate compensation under a price cap methodology, one provider after another has stopped providing IP Relay, leaving T-Mobile Accessibility as the only remaining provider since late 2014. Since that time, T-Mobile Accessibility has continued to provide this important service pursuant to a series of temporary rates, with the expectation that the Commission would restructure the IP Relay compensation methodology to be sustainable over the longer term.

In view of these circumstances, T-Mobile Accessibility urges the Commission to extend the current waivers of existing TRS rules and/or policies that preclude compensation for outreach and a portion of overhead expenses. Below, T-Mobile Accessibility provides information establishing that granting the requested relief is plainly warranted until a sustainable rate methodology is adopted.

³ Letter from Andrew S. Phillips, National Association of the Deaf, to Marlene H. Dortch, FCC Secretary, CG Docket Nos. 12-38 and 03-123, at 1 (Aug. 23, 2012).

⁴ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order, 29 FCC Rcd 16273, ¶ 7 (2014) (“*2014 IP Relay Rate Order*”) (further finding that “certain categories of consumers currently rely upon IP Relay service as their sole or primary means of communicating by telephone, including consumers who are deaf-blind or have speech disabilities, as well as deaf or severely hard-of-hearing consumers who do not know or are not comfortable with the use of American Sign Language”).

II. THE COMMISSION SHOULD GRANT THE WAIVERS NECESSARY TO ENSURE THAT T-MOBILE ACCESSIBILITY IS COMPENSATED FOR THE REASONABLE COSTS OF PROVIDING IP RELAY SERVICE

T-Mobile Accessibility wishes to continue providing IP Relay while working with the Commission on a long-term strategy that is based on a sustainable business model and will ensure a high-quality service for Americans who need this vital link to the hearing world. That is T-Mobile Accessibility's ultimate goal in these docketed proceedings – a goal that we believe the Commission shares.⁵ Until this objective can be achieved, however, T-Mobile Accessibility urges the Commission to grant the waivers necessary to permit the company to be compensated for the actual costs of providing IP Relay, including the costs of outreach and a portion of overhead.

A. DeafBlind Outreach

In 2013, the Commission prohibited IP Relay providers from including the costs of outreach in their yearly cost submissions.⁶ Since that time, the Commission granted T-Mobile Accessibility a “temporary, limited waiver” of this prohibition on “recovery of provider-directed outreach for Fund Year 2016-17” to permit T-Mobile Accessibility “to recover the costs ... for outreach activities and dedicated staff specifically targeted at outreach to the deaf-blind

⁵ Toward that end, Sprint filed a Petition for Rulemaking with the Commission in November 2018. Petition for Rulemaking of Sprint Corporation, RM-11820 (Nov. 1, 2018). *See also Consumer and Governmental Affairs Bureau Seeks Comment on Petition for Rulemaking by Sprint Corporation to Establish a New Ratemaking Methodology for IP Relay Service*, Public Notice, 33 FCC Rcd 11076 (2018).

⁶ *Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 8618, ¶ 192 (2013).

community.”⁷ The waiver was extended again for the 2017-18, 2018-19, 2019-20, and 2020-21 funding years.⁸

Pursuant to this waiver, T-Mobile Accessibility has been able to provide outreach on a local level in the 35 states and territories where it is the 7-1-1 provider, including by attending local events at which it distributed informational materials on IP Relay and assisting potential DeafBlind users with the registration process. T-Mobile Accessibility also has provided outreach on a national level, including by attending deaf-centric events to disseminate information about IP Relay and assist DeafBlind individuals with the registration process.⁹

In order to enable T-Mobile Accessibility to continue these activities, the company respectfully requests that the existing waiver be extended through the 2021-22 Fund Year. By extending the waiver, T-Mobile Accessibility will be permitted to incur costs that fall into five categories: (1) salary and benefits for three dedicated employees devoted to DeafBlind outreach; (2) travel and related expenses; (3) professional fees/interpreter support;

⁷ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program*, Order, 31 FCC Rcd 7246, ¶¶ 18-19 (2016).

⁸ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program*, Order, 32 FCC Rcd 5142, ¶¶ 11-13 (2017); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program*, Order, 33 FCC Rcd 6300, ¶¶ 8-11 (2018); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program*, Order, 34 FCC Rcd 5171, ¶ 16 (2019) (“2019 Rate Order”); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program*, Order, 35 FCC Rcd 6649, ¶¶ 12-14 (2020) (“2020 Rate Order”).

⁹ The COVID-19 pandemic resulted in the cancellation of many events in 2020 and 2021, thus disrupting T-Mobile Accessibility’s outreach activities. Many organizations are shifting to virtual events and T-Mobile has adjusted its outreach accordingly.

(4) advertising/promotional outreach; and (5) miscellaneous direct costs such as print materials in alternate formats. T-Mobile Accessibility reported these costs in the “E.2a Deaf-Blind” portion of “Appendix_0” of its response to the Interstate TRS Fund 2020 Annual State Rate Data Request, which was submitted to Rolka Loube in February 2021 (“Annual Cost Submission”).

B. Outreach to the Broader IP Relay User Population

In addition to the DeafBlind outreach waiver, the Commission granted T-Mobile Accessibility a “one-year waiver of the outreach recovery prohibition, permitting Sprint to recover costs for other forms of IP Relay outreach” in 2019.¹⁰ The Commission then renewed that waiver for the 2020-21 Fund Year.¹¹ T-Mobile Accessibility respectfully requests that the broader outreach waiver be extended through the 2021-22 Fund Year, because the conditions that led to grant of this waiver continue.

More specifically, the Commission based the waiver in part on “a lack of understanding in the potential user community about the availability of IP Relay.”¹² While T-Mobile Accessibility has been able to make headway in addressing this lack of understanding, ongoing outreach will continue to be necessary as the user community changes over time. Absent such outreach, there will be a profound lack of understanding in the potential user community about the availability of IP Relay – what it is, how it is used, and how it can benefit people seeking to communicate with the hearing world. Indeed, T-Mobile Accessibility continues to find individuals, including former IP Relay users, who are not aware that IP Relay is still being offered despite the transformative benefits of the service.

¹⁰ 2019 Rate Order ¶ 17.

¹¹ 2020 Rate Order ¶¶ 12-14.

¹² 2019 Rate Order ¶ 17.

Notably, the relevant safeguards against duplicative or wasteful spending also remain in place. The “outreach efforts of the National Outreach Program have been,” and continue to be, “focused more on educating hearing individuals about TRS than informing potential eligible users about the availability of TRS, and particularly IP Relay.”¹³ In addition, because T-Mobile Accessibility continues to be the only IP Relay provider, the contemplated outreach waiver “will not undermine the policy underlying the rule because Sprint, as the sole provider of IP Relay service, has little incentive to divert outreach funds to branded marketing.”¹⁴ Moreover, the Commission has concluded that the reports T-Mobile Accessibility has filed “regarding its outreach expenditures indicate that Sprint’s outreach activities have been appropriately targeted[.]”¹⁵

T-Mobile Accessibility reported the costs of this broader outreach in the “E.2a IP Relay Outreach” portion of its Annual Cost Submission. These costs will fall into five categories: (1) salary and benefits for staff dedicated to broader IP Relay outreach; (2) travel and related expenses; (3) professional fees/interpreter support; (4) advertising/promotional outreach; and (5) miscellaneous direct costs such as print materials in alternate formats.

C. Overhead

In 2007, the Commission concluded “that indirect overhead costs are not reasonable costs of providing TRS,” finding that “indirect overhead costs may not be allocated to TRS by an

¹³ 2019 Rate Order ¶ 17; see also 2020 Rate Order ¶ 13.

¹⁴ 2019 Rate Order ¶ 19; see also 2020 Rate Order ¶ 13 (noting that T-Mobile Accessibility’s position as the only IP Relay provider means that “provider-driven outreach... is more likely to be effective... in reaching new-to-category users (rather than merely attracting existing users from competing providers), particularly as the relevant population changes over time”).

¹⁵ 2020 Rate Order ¶ 13.

entity that provides services other than TRS based on the percentage of the entity's revenues that are derived from the provision of TRS.”¹⁶ Instead, the Commission allowed providers to recover only “those costs that are directly related to, and directly support, the provision of relay service.”¹⁷

While T-Mobile Accessibility recognizes that the Commission has rejected requests for waiver of this policy,¹⁸ as T-Mobile Accessibility has demonstrated in the past, this policy prevents the company from recovering all of the costs of providing IP Relay. As the Consumer Groups previously recognized in the record, “Sprint’s request for a waiver regarding its overhead costs is consistent with the overarching principle that the Commission should provide adequate compensation to all TRS providers for their services,” which “is of heightened importance in a market where only one provider remains.”¹⁹

Overhead costs are unavoidable costs that all businesses incur, whether a service industry or product industry. These are costs that cannot be directly assigned to a given product or service. The only way a business can recover these costs is to include a reasonable portion of such costs in the prices of its goods and services. In fact, the Commission’s own regulatory fees recover “indirect costs, such as overhead functions.”²⁰

¹⁶ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Declaratory Ruling, 22 FCC Rcd 20140, ¶¶ 74-75 (2007).

¹⁷ *Id.*

¹⁸ *2019 Rate Order* ¶ 20; *2020 Rate Order* ¶ 15.

¹⁹ Comments of Telecommunications for the Deaf and Hard of Hearing, National Association of the Deaf, Association of Late-Deafened Adults, Hearing Loss Association of America, Cerebral Palsy and Deaf Organization, and American Association of the DeafBlind, CG Docket Nos. 03-123 and 10-51, at 13 (Apr. 8, 2019).

²⁰ *Assessment and Collection of Regulatory Fees for Fiscal Year 2020*, Report and Order and Further Notice of Proposed Rulemaking, MD Docket No. 20-105, FCC 20-120, ¶ 2 (rel. Aug. 31, 2020).

Put simply, all profitable companies must recover overhead costs. If one product or service is not assigned any of the costs, the other products and services must be priced to recover a higher portion of the overhead costs. If IP Relay is not assigned any overhead costs, the company's other products and services must be priced higher to make up for the unassigned costs. This weakens T-Mobile's ability to compete in all the other markets. Since T-Mobile provides IP Relay voluntarily, if it is consistently precluded from reasonable cost recovery, one day it may choose to exit that business and instead to concentrate on more sustainable business opportunities.

Given the unique position of T-Mobile Accessibility as the sole remaining IP Relay provider, the company again urges the Commission to: (1) recognize that T-Mobile Accessibility needs these overhead services in order to provide a high-quality service; and (2) permit the company to recover a modest contribution to the recovery of those costs from its IP Relay service. In particular, the Commission should waive its current policy to allow T-Mobile Accessibility to recover a percentage of the overhead costs commensurate with the percentage of T-Mobile's revenues that are derived from providing IP Relay. T-Mobile Accessibility reported the portion of its general and administrative expenses used by IP Relay as "Other Corporate Overheads" in the "Official Filing Forms" portion of its Annual Cost Submission.

III. GRANT OF THE REQUESTED WAIVERS IS IN THE PUBLIC INTEREST

Waiver of Commission rules is permitted upon a showing of "good cause."²¹ Specifically, the Commission may waive its rules where the particular facts would make strict compliance inconsistent with the public interest, taking into account, *inter alia*, considerations of

²¹ 47 C.F.R. § 1.3.

“hardship, equity, or more effective implementation of overall policy on an individual basis.”²²

Waiver is particularly appropriate where “special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.”²³

In this case, grant of the waivers and other relief necessary to establish a reasonable IP Relay rate would clearly serve the public interest and advance the Commission’s general public policy objectives. The requested relief also would unquestionably further the Commission’s overriding goal of ensuring that individuals with disabilities have unfettered access to functionally equivalent telecommunications.²⁴ As the Commission has found, the “consequences of Sprint’s termination of IP Relay service would be severe for consumers who are deaf, deaf-blind, hard-of-hearing, or have speech disabilities.”²⁵ Moreover, today’s IP Relay marketplace is rife with “special circumstances,” including the departure of all other relay providers and the fact that the Commission has yet to reform the IP Relay rate methodology, a step that would avoid ongoing hardships for the sole remaining provider of this much-needed service.

²² *Numbering Resource Optimization; Petition of California Public Utilities Commission for Waiver of the Federal Communications Commission’s Contamination Threshold Rule*, Order, 18 FCC Rcd 16860, ¶ 9 (2003) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972) (“*WAIT Radio*”); *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990)).

²³ *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d at 1166 (referencing *WAIT Radio*).

²⁴ 47 U.S.C. § 225.

²⁵ *2014 IP Relay Rate Order* ¶ 7.

IV. CONCLUSION

For the foregoing reasons, T-Mobile Accessibility respectfully requests that the Commission grant the interim waivers and relief described herein in order to ensure that IP Relay continues to be a stable, functionally equivalent offering until the FCC adopts a sustainable longer-term rate methodology for this important service.

Respectfully submitted,

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